**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.17234 OF 2005**

**Dated: 2nd November, 2005.**

Between:

G. Rajendranath Goud … Petitioner

And

1. The Commissioner, Endowments Department, Govt. of A.P., Tilak Road, Hyderabad.
2. The Assistant Commissioner and Executive Officer, Sri Venkateswara Swamy Temple, Chikkadapally, Hyderabad. … Respondents

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**WRIT PETITION NO.17234 OF 2005**

**ORDER :**

This writ petition is filed questioning the order dated 22-6-2005 passed by the 1st respondent – Commissioner of Endowments, Government of A.P., Hyderabad.

The Writ petitioner is a member of founder family of Sri Venkateswara Swamy Temple, Chikkadapalli, Hyderabad. It is not in dispute that by proceedings dated 29-12-2003 the 1st respondent – Commissioner of Endowments accorded permission to the 2nd respondent - Executive Officer of Sri Venkateswara Swamy Temple, Chikkadapalli for payment of Rs.9,000/- per month to the petitioner from the funds of Devasthanam towards car allowance. The petitioner states that in pursuance thereof he received the allowance from December, 2003 onwards. However, the 1st respondent, by order dated 22-6-2005 directed the 2nd respondent to stop the payment of car allowance to the petitioner which is under challenge in this writ petition.

A perusal of the impugned order dated 22-6-2005 shows that the 2nd respondent has reported that an auto was purchased in the year 2001 for temple use and that the petitioner and his family members were using the said auto for their personal use even after the sanction of the car allowance to the petitioner under the proceedings dated 29-12-2003. It was further stated by the 2nd respondent - Executive Officer that as a matter of fact the petitioner resides in a building just by the side of the temple and since the temple does not have any landed properties in the city or elsewhere, he had not hired any car, but he was using his own car by utilising the services of the auto driver of the temple which resulted in heavy loss to the temple on account of the expenditure towards payment of car allowance as well as the maintenance charges of auto including the salary of the driver. On the basis of the said report, the 1st respondent passed the impugned order withdrawing the car allowance sanctioned earlier to the writ petition.

It is to be noted that the writ petitioner earlier filed W.P.No.9587 of 1999 claiming certain facilities including the car allowance on par with the nominated or members of the founder families of other temples in the State which are similarly situated. The

said claim was opposed by the respondents contending that since Sri Venkateswara Swami Devasthanam, Chikkadapalli does not have landed property anywhere and the income of the temple was only about Rs.60 lakhs, the same cannot be placed on par with the other temples in the State which have landed properties located at different places and require to be inspected frequently by the trustees necessitating grant of car allowance to the trustees of the said temples.

In the light of the said averments in the counter-affidavit, this Court by order dated 18-2-2003 negatived the claim of the petitioner for car allowance and accordingly dismissed W.P.No.9587/1999.

The learned Counsel for the petitioner submits that notwithstanding the dismissal of the said writ petition, the 1st respondent having considered the fact that in view of the developments made to the temple the income has been increased to about Rs.1 crore and also keeping in view the needs of the temple in question, sanctioned the car allowance to the petitioner by proceedings dated 29-12-2003. The learned Counsel vehemently contends that the allegations made in the impugned proceedings dated 26-2-2005 are absolutely false and without any basis and particularly since no opportunity was afforded to the petitioners to rebut the said allegations, the impugned proceedings withdrawing the car allowance to the petitioner is arbitrary and illegal.

In the counter-affidavit filed by the 2nd respondent, the fact that the petitioner was not issued any notice before passing the impugned order has not been disputed. However, it is stated that the petitioner is not entitled to any car allowance since the 2nd respondent temple does not have any landed property and its income is only Rs.60 lakhs and therefore the impugned proceedings cannot be found fault with.

The learned Counsel appearing for the respondents contends that since the petitioner has no legal right for payment of the car allowance and moreover since his claim was already rejected by this Court in W.P.No.9587 of 1999 which has become final, the writ petition is misconceived and liable to be dismissed in limini.

It is not in dispute that the temple in question falls under the category specified under Section 6 (a) of The A.P. Charitable and Hindu Religious Institutions & Endowments Act 30 of 1987. However, the specific case of the respondents is that since the temple does not possess any landed property, there is no need for the trustees to visit the properties of the temple and therefore the petitioner is not entitled to any vehicle allowance.

The respondents also placed much reliance upon the order in W.P.No.9587 of 1999, in which the claim of the petitioner for such benefits on par with other similarly situated temples was negatived by this Court. However, it is to be noted that whereas the said writ petition was dismissed on 18-2-2003, notwithstanding the same the 1st respondent by a subsequent proceedings dated 29-12-2003 accorded permission for payment of car allowance to the petitioner from the funds of the temple. It is relevant to note that the same was sanctioned on the basis of a report made by the 2nd respondent - Executive Officer himself. Hence, the mere fact that the claim of the petitioner was disallowed in W.P.No.9587 of 1999 cannot be taken as a sole ground for withdrawing the car allowance already sanctioned. As a matter of fact, a perusal of the impugned proceedings shows that the same was passed on the basis of a report by the 2nd respondent - Executive Officer alleging that the petitioner was misutilising the services of the auto driver of the temple. The further allegation appears to be that the temple is sustaining heavy loss on account of payment of car allowance to the petitioner. Thus, it is clear that the impugned order is emanated from certain allegations made by the 2nd respondent - Executive Officer against the petitioner. If that be so, before taking any punitive action on the basis of such allegations, the fundamental principles of natural justice require that the petitioner should be afforded an opportunity to rebut the allegations levelled against him.

It is also relevant to note that the petitioner attributes mala fides to the 2nd respondent and alleges that the 2nd respondent is inimically disposed against him which resulted in the impugned proceedings. It is not necessary for this Court to go

into the correctness of the said allegations, however as expressed above, I am of the opinion that the impugned order which is penal in nature ought not to have been passed by the 1st respondent without affording a reasonable opportunity to the petitioner to rebut the allegations levelled against him. Since the car allowance was sanctioned to the petitioner subsequent to the dismissal of W.P.No.9587 of 1999, the plea of the respondents that the petitioner is not entitled to car allowance since the temple does not possess any landed properties does not appear to be a valid reason for withdrawing the allowance already sanctioned.

Obviously, the impugned order was based on certain allegations levelled against the petitioner by the 2nd respondent. Hence, without expressing any opinion as to the correctness of the allegations made against the petitioner, the impugned order which is in violation of the principles of natural justice is set aside and the Writ Petition is disposed of making it clear that this shall not preclude the respondents from passing appropriate orders afresh after affording due opportunity to the petitioner to rebut the allegations levelled against him. No costs.

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2nd November, 2005.

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